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POTTER COUNTY, TEXAS

OCT 18

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RQ-624



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The Honorable Dan Morales
Attorney General
Opinion Committee
P. O. Box 12548
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FILE # ML-22795-93 October 12, 1993
I.D.# 22795

Dear General Morales:

The Potter County Commissioners Court has requested that I seek an opinion from your office concerning medical insurance coverage for certain district officers in Potter County. By "district officers", we refer to the judges of the 47th, 107th, 181st, 251st, and 320th District Courts; the 47th District Attorney; and the Potter County agricultural and home extension agents. The County has certain budgetary responsibilities toward these offices, but primary salary and benefits for each officer is provided by the State.

District judges and the district attorney are state employees as defined by the Insurance Code, and receive medical insurance coverage from the State. V.A.T.S., Insurance Code art. 3.50-2, Sec 3 (5) (A); Sec. 13 (b) (Vernon Supp. 1993); The county extension agents are employees of the Texas Agricultural Extension Service, which is affiliated with Texas A & M University. Vernon's Tex. Agriculture Code Sec. 88.001 (Vernon 1991). These employees also receive insurance coverage through the State. V.A.T.S. art. 3.50-3, Sec. 3 (4) (A), Sec. 11 (Vernon Supp. 1993). Under the terms of the Potter County, Texas Employee Handbook, elected officials participate in all benefit programs. By long standing practice, the county agents have also been included in the benefits. Therefore, Potter County provides and pays for group health insurance for the district officers. The result is that district officers have health insurance coverage from the State and the County.

The cost to the County of providing this coverage to the district officers is \$39,000.00. As a budget reduction measure, a proposal was made to drop the medical coverage for the district officers. Several questions about this proposal were raised, as will be detailed.

The initial proposal was modified to eliminate coverage at the end of the elected officer's current term, or, in the case of the county agents, when they left employment. Any elected officer who was reelected would be allowed to participate in the coverage by paying the premium. Some members of the Commissioners Court felt this was unfair to the elected officers because coverage would not be paid for by the County if they were reelected, while the county agents could retain their coverage as long as they were employed. The result of the discussion of this matter was a compromise which phases out the medical coverage for district officers. Medical coverage is retained for all current district officers, but eliminated for the successors of the current officers. In the case of elected officers, it was the intent of the Commissioners to retain the insurance for the current occupant of the officer even through subsequent terms of office. If the officer ran for reelection, and won, he is provided the coverage. However, a challenger who won would not be covered.

The Order entered by the Commissioners is attached as Exhibit "A" to this request.

Because of the various legal issues that arose during the consideration, the Order contains a provision requesting our office to seek an opinion on the validity of the Order. In the event the compromise agreement in the Order is considered to be invalid, the coverage will be eliminated at the end of the current term of an elected officer, and when a county agents leaves his or her current position.

We have the several legal questions, followed by our own conclusions, for your consideration.

1) Is the County required to provide the medical coverage to district officers that it provides to elected County officials and County employees?

The answer to this question is "No." The County may provide medical insurance for district officers, but is not required to do so. LOCAL GOV. CODE §157.002(a) says:

(t)he commissioners court by rule may provide for medical care and hospitalization and may provide for . . . hospital . . . insurance for the following persons...: . . . district officers...

The decision to provide medical insurance, and other benefits, is within the discretion of the Commissioners Court. LOCAL GOV. CODE §157.002. Implicit in this discretion is the Commissioners' ability to raise, lower, or leave insurance coverage unchanged.

Since the Court has authority over this aspect of the district officers' compensation package, the decision as to the components of that package may not be overturned as long as it is reasonable. Carver v. Wheeler County, 200 S.W. 537 (Civ. App. - Amarillo, 1918).

We are not aware of any contract between the district officers and the County whereby the County is obligated to provide additional medical coverage. The practice of providing the coverage is apparently a long-standing one, but the only written reference is found in the Potter County Personnel Handbook, which states that the County "provides and pays for group health . . . for all full-time regular employees and elected officials." Potter County Personnel Handbook, p. 8. The Handbook also states that "[a]ll Elected Officials . . . will participate in all benefit programs required by law and may participate in all other benefits except where prohibited." Supra, p. 2. However, it is also stated that "(t)he policies and conditions herein are subject to change by the County without notice." Id.

In regard to district judges in particular, while the courts may demand and receive some things from the Commissioners as part of their inherent power, this power is limited to benefits and facilities essential to the operation of the courts. Bomer v. Ector County Comm'rs Court, 676 S.W.2d 662, 665 (Tex. App. - El Paso 1984, writ ref'd); District Judges of 188th Judicial District v. Gregg County, 657 S.W.2d 908 (Tex. App. - Texarkana, 1983, writ ref'd n.r.e).

It therefore appears that the decision to provide additional medical coverage is entirely discretionary with the Commissioners Court.

Some have argued that the additional coverage is illegal because it increases the supplement paid by the County over the statutory limit for salary supplements. We disagree with this argument. The County is required to provide a salary supplement to the district judges. GOV. CODE § 32.188. (emphasis added). The statute further provides that "(t)he salary is in addition to any other compensation paid or authorized to be paid to the judges." Id. This language appears to be unique to Potter and Randall Counties among all of the statutes governing salary supplements for district judges; most other counties' statutes provide that the salary is in addition to the state salary paid to the district judges. Since there appears to be authority to provide the insurance, and since there is no authority to include other benefits in calculating the salary supplement, the County is not violating any law by providing the medical insurance.

2) Does any reduction in medical benefits violate the Americans with Disabilities Act?

During the debate on this matter, it was revealed that some of the district officers have a medical condition that would make it difficult or impossible to replace the additional medical insurance. An argument was raised that if a district officer had a disability, the County could not eliminate the additional insurance.

Although we do not address whether the district officers are employees of the County, under the Americans with Disabilities Act of 1990 (ADA), an employer cannot refuse to insure, limit the amount of insurance or charge a different rate solely because of a person's disability. An employer could, however, administer or structure health insurance plans based on factors other than disability, as long as such activities are not used as a subterfuge to evade the purposes of the Act. **AMERICANS WITH DISABILITIES ACT, Title I, §102, Title V §501 (c); EEOC Regulations §1630.16(f).** Thus we do not believe that the withdrawal of insurance coverage would violate the ADA so long as the withdrawal was not because of any disability the district officers may have.

3) Is it a violation of the Equal Protection Clause of the United States Constitution if some district officers receive insurance coverage, while others do not?

If the coverage is phased out as a district officer's term of election or employment ends, then there will be a time when some district officers are covered, but others are not. An argument has been raised that a constitutional equal protection problem may result. We do not accept this argument. The distinction between covered and non-covered judges would be based on the timing of the expiration of a judge's current term of office. Such distinction is permissible so long as it has a "rational basis." The reasons for eliminating the coverage (the district officers are already covered by state insurance; the County would save money), coupled with our opinion that the County may (but does not have to) provide the insurance, appears to establish such a rational basis. We do not believe that any other constitutional right would be violated by not providing the insurance. For example, since notice of the action of the Commissioners Court was given, and action was taken in an open meeting, any requirement of procedural due process has been satisfied. We also believe that a decision to reduce or eliminate the coverage based on fiscal considerations would be difficult to overturn. Op. Att'y Gen'l No. JM-770 (1987).

4) Is the Order invalid because it results in a different benefit package being provided to a current district elected officer as opposed to a successful challenger to that officer?

It is our opinion that the Order cannot distinguish between incumbents and challengers as far as offering medical coverage.

The underlying rationale of this Order is that the financial benefit of eliminating additional medical coverage outweighs the advantages of retaining the coverage. This is a political decision to be made by the Commissioners.

Under the terms of the Order, a current district officer who wins his reelection bid will be provided with County coverage, but a challenger who is successful will not. In our judgment, if economy is the purpose of the Order, this distinction is not justified.

On the one hand, we see the possibility of the County being accused of favoring an incumbent over the challenger. On the other hand, a challenger could have a campaign issue to raise against the incumbent.

Setting this objection aside, it may be that the County is not required to offer the same benefits to each district officer. The Commissioners Court could reasonably decide to offer a different salary supplement to each. Op. Att'y Gen'l No. JM-770 (1987). However, any such distinctions would have to be based on the circumstances of a particular district office. Quoting JM-770, which deals with the propriety of offering different salaries to constables in a county:

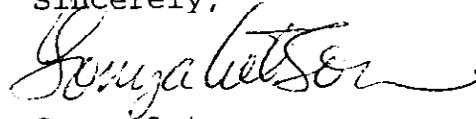
...the commissioners court may provide for different salaries for constables depending upon the circumstances in each precinct if the circumstances reasonably require different salaries and if each salary is in itself reasonable. The circumstances that may properly be considered relate to what constitutes a reasonable salary. *Supra*, p. 3613.

For any elected officer, compensation is a trait of the office, and not of the occupant of the office. Since benefits are analogous to compensation, the same principle applies, and medical insurance, if it is offered at all, must be offered to any occupant of a district office, whether that person is an incumbent or a successful challenger.

October 12, 1993

We appreciate your assistance in this matter.

Sincerely,



Sonya Letson

c: Hon. Arthur Ware
Commissioner Cliff Roberts
Commissioner Manny Perez
Commissioner Will Thirlkill
Hon. David Gleason
Hon. Abe Lopez
Hon. Sam Kiser
Hon. Pat Pirtle

Hon. Don Emerson
Hon. Danny Hill
Mr. Don Reeves
Mrs. Alby Peters
Mr. Marcel Fischbacher
Ms. Tamara Overcast
Mr. Gerald Joy